IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No.02 of 2005
(U/s 482 Cr.P.C.)

1. Satyapal Singh
2. Ranjan

.....Applicants

Versus

State of Uttarkahand and another

.....Respondents

Hon'ble Servesh Kumar Gupta, J.

Mr. Lokendra Dobhal, Advocate, for the applicants.

Mr. K.S. Rautela, AGA for the State.

Mr. Rajendra Singh, Advocate, for respondent no.2.

Having heard the rival submissions and in view of the reasons stated in the affidavit, restoration application no.917 of 2012 is allowed thereby condoning the delay in filing the same, and resultantly, the petition no.2 of 2005 is restored to its original number.

C482 Petition no.2 of 2005

Also heard on the merits of petition.

Before going to the facts of the instant petition, it is pertinent to look at the age-old animosity persisting between the parties. This state of affairs between Satyapal Singh and Virendra Arya is adverted from the F.I.R. lodged on 27.4.1995 by respondent no.2 u/s 379 IPC. The matter was investigated culminating into the submission of a final report on 30.4.1995 with a recommendation u/s 182 Cr.P.C. to launch the prosecution against Mr. Arya for setting the criminal law into

motion on the false allegations. This final report was accepted by the Magistrate on 8.1.1996.

Subsequently in pursuance of an F.I.R. lodged by petitioner no.1 Satyapal Singh on 18.1.2003 for the offences punishable u/s 420, 467, 468, 471, 506 and 120-B IPC, the investigation resulted into the submission of a chargesheet on 11.3.2003 against respondent no.2 and others. The said chargesheet was challenged by way of C482 petition no.191 of 2003 and the same was quashed by this Court vide judgment dated 5.12.2007.

Learned counsel has argued that as a counterblast to the said FIR, respondent no.2 also lodged an F.I.R. against the petitioners showing the incident of same evening. Respondent no.2 also got himself examined in a government hospital and his injury report is annexed as Annexure no.2 to the petition which reads as under: -

1. *"Incised wound 3 cm x 0.2 cm x skin deep on left side chest, 7 cm above left nipple at 11'o clock position.*

2. *Incised wound 3.5 cm x 0.2 cm x skin deep on right side of abdomen, 7 cm above urinary at 10'o clock position.*

3. *Incised wound 2 cm x 0.2 cm x skin on back of left forearm middle part.*

4. *Contusion 6 cm x 3 cm on outer aspect of left opposite arm middle part red.*

5. *Contusion 8 cm x 2 cm on right side back upper part red.*

6. *Contusion 5 cm x 2 cm on outer aspect of left thigh middle part red.*

Opinion- Injuries no.1, 2 and 3 are caused by sharp edged object and nos.4, 5 and 6 are by hard blunt object. All the injuries are simple, duration fresh."

In pursuance of the above FIR lodged by respondent no.2, the investigation commenced which resulted into the submission of a final report by S.I. Ram Bahadur Singh on 13.6.2003 (Annexure 7 to the petition). Respondent no.2 thereafter filed a protest petition on 29.9.2003, so the competent Magistrate directed the matter to be further investigated on 8.10.2003. In compliance thereof, the matter was further investigated by yet another S.I. Suraj Bhan Singh who also submitted a final report in the matter on 24.12.2003.

When the final reports were submitted by two different Inspectors, who did not find the occurrence to be true, then the S.O. of P.S. Gangnaher also submitted a report u/s 182 Cr.P.C. on 24.12.2003 before the concerned Magistrate. Respondent no.2 thereafter moved a protest petition further which was registered by the Magistrate as a complaint case wherein the statements were recorded. After that the learned Magistrate took cognizance in the matter which is impugned in this petition.

The attention of this Court has been drawn towards the statement recorded u/s 161 Cr.P.C. of the witnesses namely, Virendra Singh Tyagi, Ram Gopal Sharma, Dr. C.S. Rawat and C.V. Bhatt (Pharmacist) (*annexed as Annexure 3 to the petition*). Mr. Virendra Singh Tyagi, though was not the eyewitness of the incident but reached at the spot soon after the occurrence. He has deposed that he noticed the clothes of respondent no.2 stained with blood, whereas the shirt was also having the mark of blade cutting but this witness has also stated that the injuries on the body of victim were not appearing as if he had been assailed. Even the second witness

Mr. Ram Gopal Sharma has completely denied the occurrence, and has stated that in order to implicate falsely, these injuries were self-inflicted; the similar view was expressed by Dr. C.S. Rawat, which was also ratified by the view of Mr. C.V. Bhatt, Pharmacist of the hospital.

Learned counsel for respondent no.2 has argued that the statements recorded u/s 161 Cr.P.C., since not been signed by the witnesses, can be reduced into writing by the Investigating Officer himself as per his own choice in the case diary, so the same cannot be believed.

The Court feels that at this stage firstly, when none of the witnesses have supported the version of prosecution, secondly the medical witnesses i.e. the medical officer as well as pharmacist have opined that the injuries did not appear to have been caused by some assailant rather the same were opined to be self-inflicted by some blade, thirdly, the submission of final reports by two different Sub Inspectors regarding the same incident and lastly, looking to the past animosity persisting between the parties to the extent of recommendation of Section 182 Cr.P.C. against respondent no.2, the Court feels that the petition deserves to be accepted.

In view of what has been stated above, the petition is allowed. The entire proceedings of criminal case no.2 of 2005, *Virendra Arya Vs. Satyapal Singh and another* under Sections 323, 452, 504 and 506 IPC, pending before the court of Special Judicial Magistrate, Roorkee, District Haridwar, are hereby quashed.

(Servesh Kumar Gupta, J.)

21.12.2012

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